

III. REMARKS

Claims 22-28, 30-42 and 56-63 are pending in this application. By this amendment, claims 22, 28, 30, 40, 56, 60 and 61 have been amended. Applicants do not acquiesce in the correctness of the rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

In the Office Action, claims 28, 40, 56-59 and 61 are rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. Claims 22-24, 26, 30-36, 40 and 60-63 are rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Yamaki *et al.* (U.S. Patent No. 5,858,012), hereafter “Yamaki.” Claims 30, 37, 39 and 40 are rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Hisada (U.S. Patent No. 6,482,196), hereafter “Hisada.” Claims 25 and 27 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Yamaki. Claims 28, 41 and 42 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Yamaki. Claims 38, 41 and 42 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Hisada. Claims 56-59 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Hisada in view of Glaug *et al.* (U.S. Patent No. 5,601,545), hereafter “Glaug.”

A. REJECTION OF CLAIMS 28, 40, 56-59 and 61 UNDER 35 U.S.C. §101

The Office has rejected claims 28, 40, 56-59 and 61 for allegedly being directed to non-statutory subject matter. Applicants respectfully traverse the rejection. Applicants have amended claims 28, 40, 56 and 61 to recite, "...a middle back area when the article is worn by the user." Claims 57-59 depend from claim 56. Applicants assert that this amendment further directs the invention to statutory subject matter. Accordingly, Applicants request that the rejection be withdrawn.

B. REJECTION OF CLAIMS 22-24, 26, 30-36, 40 and 60-63 UNDER 35 U.S.C. §102(e)

With regard to the 35 U.S.C. §102(e) rejection over Yamaki, Applicants assert that Yamaki does not teach each and every feature of the claimed invention. For example, with respect to independent claims 22 and 60 and dependent claim 31, Applicants submit that Yamaki fails to teach a back guard extending above the rear portion and the front portion when the article is worn by the user, wherein the back guard comprises a separately positioned elastic. The Office equates the separately positioned elastic of the claimed invention with the elastic members of Yamaki. Col. 2, lines 28-32; FIG. 2. However, the elastic members of Yamaki are indicated as being in the proximity of the peripheral edges of the waist opening. Col. 2, lines 28-32; FIG. 1. To this extent, the elastic members of Yamaki are not located on a portion of Yamaki that extends above the front end (i.e., above the waist region). Nowhere does Yamaki teach that its elastic members are located on a portion of the garment that extends above the front portion. In contrast, the claimed invention includes "...a back guard extending above the rear portion and the front portion when the article is worn by the user, wherein the back guard comprises an

absorbent material and a separately positioned elastic.” Claim 22. As such, the separately positioned elastic of the claimed invention is not merely located at the waist opening as are the elastic members of Yamaki, but instead help comprise the back guard that extends above the rear portion and the front portion when the article is worn by the user. Thus, the separately positioned elastic of the claimed invention is not taught by elastic members of Yamaki. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

With respect to independent claim 30, Applicants respectfully submits that Yamaki also fails to teach that the back guard comprises a vertical extension and opposing horizontal extensions that extend laterally outward from outer edges of the vertical extension. The Office equates the back guard of the claimed invention with the rear end of Yamaki. Col. 2, lines 61-64; FIG. 2. However, Yamaki never teaches that its rear end is above the front and back portions of the garment that extend to the waist area when worn by a user, and that its rear end has horizontal extensions that extend laterally outward from outer edges of the vertical extension. The claimed invention, in contrast, includes “...wherein the back guard comprises a vertical extension and opposing horizontal extensions that extend laterally outward from outer edges of the vertical extension.” Claim 30. To this extent, unlike in Yamaki, the portion of the incontinence article that extends above the waist area (i.e., above the front portion and the rear portion) when worn by a user has opposing horizontal extensions that extend laterally outward from outer edges of the vertical extension. For the above reasons, the rear end of Yamaki does not teach the back guard of the claimed invention. Accordingly, Applicants request that the rejection be withdrawn.

With regard to the Office's other arguments regarding dependent claims, Applicants herein incorporate the arguments presented above with respect to independent claims listed above. In addition, Applicants submit that all dependant claims are allowable based on their own distinct features. However, for brevity, Applicants will forego addressing each of these rejections individually, but reserve the right to do so should it become necessary. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

C. REJECTION OF CLAIMS 30, 37, 39 AND 40 UNDER 35 U.S.C. §102(e)

With regard to the 35 U.S.C. §102(e) rejection over Hisada, Applicants assert that Hisada does not teach each and every feature of the claimed invention. For example, with respect to independent claim 30, Applicants respectfully submits that Hisada fails to teach that the back guard comprises a vertical extension and opposing horizontal extensions that extend laterally outward from outer edges of the vertical extension. The Office cites FIGS. 1-2C of Hisada as teaching this feature, stating that "...a portion of the center back guard constitutes a vertical extension and the sides of the back guard constitutes opposing horizontal extensions. Office Action, page 6. However, Hisada does not teach that the sides of the portion of the center back guard extend laterally outward from outer edges of the vertical extension. The claimed invention, in contrast, includes "...wherein the back guard comprises a vertical extension and opposing horizontal extensions that extend laterally outward from outer edges of the vertical extension." Claim 30. To this extent, unlike in Hisada, the portion of the incontinence article that extends above the waist area (i.e., above the front portion and the rear portion) when worn by a user has opposing horizontal extensions that extend laterally outward from outer edges of the

vertical extension. For the above reasons, sides of the portion of the center back guard of Hisada does not teach the horizontal extensions of the claimed invention. Accordingly, Applicants request that the rejection be withdrawn.

With regard to the Office's other arguments regarding dependent claims, Applicants herein incorporate the arguments presented above with respect to independent claims listed above. In addition, Applicants submit that all dependant claims are allowable based on their own distinct features. However, for brevity, Applicants will forego addressing each of these rejections individually, but reserve the right to do so should it become necessary. Accordingly, Applicants respectfully requests that the Office withdraw its rejection.

D. REJECTION OF CLAIMS 25, 27, 28, 38, 41, 42, and 56-59 UNDER 35 U.S.C. §103(a)

With regard to the 35 U.S.C. §103(a) rejections, Applicants assert that the combined references cited by the Office fail to teach or suggest each and every feature of the claimed invention. For example, with respect to the Office's rejection of claims 25 and 27 over Yamaki; the Office's rejection of claims 28, 41 and 42 over Yamaki; and the Office's rejection of claims 38, 41 and 42 over Hisada, Applicants assert that the Office's factual assertion are not properly based upon common knowledge. Accordingly, Applicants respectfully request that the Office support the finding with references that show these features.

Furthermore, with regard to the 35 U.S.C. §103(a) rejection of claims 56-59 as being unpatentable over Hisada in view of Glaug, Applicants submit that there is no motivation or suggestion, in the references themselves or elsewhere in the art, to combine the references. Specifically, the disposable undergarment of Hisada is described as a belly protector. Hisada

never teaches or suggests that the disposable undergarment is an incontinence article. In contrast, Glaug teaches a disposable incontinence article that has as its purpose to absorb human waste materials. To this extent, Hisada and Glaug are not in analogous art areas, do not have similar purposes, and do not solve similar problems. Thus, the Office has failed to prove a *prima facie* case of obviousness. Accordingly, Applicants respectfully request that the rejection be withdrawn.

With regard to the Office's other arguments regarding dependent claims, Applicants herein incorporate the arguments presented above with respect to independent claims listed above. In addition, Applicants submit that all dependant claims are allowable based on their own distinct features. However, for brevity, Applicants will forego addressing each of these rejections individually, but reserve the right to do so should it become necessary. Accordingly, Applicants respectfully requests that the Office withdraw its rejection.

III. CONCLUSION

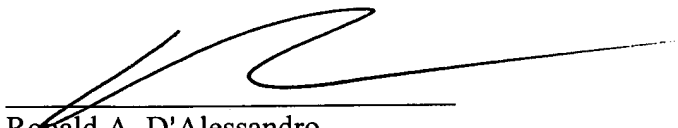
In addition to the above arguments, Applicants submit that each of the pending claims is patentable for one or more additional unique features. To this extent, Applicants do not acquiesce to the Office's interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicants do not acquiesce to the Office's combinations and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Office's combinations and modifications have not been separately addressed herein for brevity. However, Applicants reserve the right to present such arguments in a later response should one be necessary.

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,

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